

# DRAFT

## Article ## Zoning

To see if the Town will vote to amend the Eastham Zoning Bylaw, **SECTION 7 - INTENSITY REGULATIONS** by inserting a new **SUBSECTION 7.7 INCLUSIONARY ZONING** with the following language:

### **7.7 INCLUSIONARY ZONING**

#### **7.7.1 Purpose and Intent.**

The purpose of this bylaw is to encourage development of new housing that is affordable to persons of various age and income levels in accordance with Massachusetts General Law, Chapter 40A, Section 9, which allows municipalities to adopt “incentive” ordinances for the creation of affordable year-round housing, and for the purpose of:

1. Helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price; and,
2. Maintaining a stable economy by preventing out-migration of residents who provide essential services.

The intent of this bylaw is to:

3. Diversify the types of housing available in the community and broaden housing opportunities for households of all income levels, ages and sizes.
4. Encourage and support a stable and diverse year-round community and a robust local workforce.
5. Prevent the displacement of current Eastham residents and encourage the influx of new residents.
6. Encourages a more efficient use of the Town’s housing supply and building stock while maintaining the character of the areas in which affordable housing is located.

### 7.7.2 Applicability

In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

1. Any project that results in a net increase of four or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or nonresidential space;
2. Inclusionary Zoning provisions do not apply to seasonal work force housing.

### 7.7.4 Mandatory provision of affordable units.

As a condition of approval for a special permit, the applicant shall contribute to the local stock of affordable units in accordance with the following requirements.

1. The second unit created, and every fourth unit created there-after shall be deed restricted as permanently affordable units as follows:
  - **Affordable Housing Units:** 80% or Below, Maximum rents and/or sale price shall be governed by DHCD's regulations under Chapter 40B of the Massachusetts General Laws, and shall be set at levels that will enable the Town to qualify the Affordable Housing Units created under this bylaw towards the Town's Subsidized Housing Inventory (SHI).
  - **Workforce Housing Units:** Maximum rents and/or mortgage payments shall not exceed 30% of annual income for a household at or below 120% of Barnstable County median income adjusted by household size.
2. All units created shall be for year-round housing. Housing units created under this bylaw shall be established as Affordable Housing Units and/or Workforce Housing Units as defined in this bylaw, in any one or combination of methods provided for below:
  - Constructed or rehabilitated on the locus subject to subdivision or special permit or site plan approval or
  - Constructed or rehabilitated on a locus different than the one subject to subdivision or special permit or site plan approval.

In no case shall less than fifty percent of the units be affordable to households earning less than 80% of the area median income. Remaining units shall be affordable to those earning no more than 120% AMI.

3. Developments may not be segmented or phased to avoid compliance with this bylaw. For example, the divisions of land that would cumulatively result in an increase by four or more residential lots above the existing on a parcel of land or contiguous parcels in

common ownership as of May 2, 2022 shall be subject to this bylaw.

#### **7.7.5 Dimensional and density regulations for on-site units.**

The following dimensional and density regulations shall apply to any development that provides all of the required affordable units as on-site units; provided, that for purposes of determining a development's base maximum density and required percentage of affordable units, the building and area requirements of the zoning district in which the development is located shall apply.

1. **Density bonus for on-site units.** For each Affordable Housing Unit or Workforce Housing Unit, the applicant may propose one additional dwelling unit for each Affordable Housing Unit and/or Workforce Housing Unit based upon the recommendation of the Eastham Board of Health that the wastewater system recommended for the site meets all state and local environmental standards for the protection of public health and water quality.
2. **Off-street parking requirements.** The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable to the zoning district in which the Affordable Housing Development is located provided the applicant demonstrates that the proposed parking is sufficient to address the parking needs of the Affordable Housing Development.

#### **7.7.6 Provisions applicable to affordable/workforce housing units on and off site.**

1. **Siting of affordable and workforce units.** All affordable units constructed or rehabilitated under this bylaw shall be distributed equally throughout the development and shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.
2. **Minimum design and construction standards for affordable and workforce units.** Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.
3. **Timing of construction or provision of affordable/workforce units or lots.** Pursuant to section 7.7.4.1 of this bylaw, the second unit created, and every fourth unit created there-after shall be either an affordable or workforce housing unit. Affordable units shall not be the last units to be built in any development covered by this bylaw.
4. **Marketing plan for affordable/workforce units.** Applicants under this bylaw shall submit a marketing plan or other method approved by the Town through its local Comprehensive Plan or Community Development Plan to the Planning Board for its approval which describes how the affordable and/or workforce units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants. The plan shall be in conformance with DHCD rules and regulations and shall be subject to review and

approval by DHCD. The property owner shall be responsible for retaining the services of a qualified entity (in compliance with the Massachusetts Department of Housing and Community Development's most recent Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines), subject to the Planning Board's approval, to seek buyers and/or renters for the affordable and/or work force units and shall submit an annual report to the Planning Board detailing compliance with the affordable housing provisions of the housing development approval. Said approved qualified entity shall be responsible for monitoring the long-term affordability of the units and shall report any deviations from these provisions to the Building Inspector and the Planning Board.

#### **7.7.7 Provision of affordable/work force housing units off site**

1. As an alternative to the requirements of section 7.7.6 an applicant subject to this bylaw may develop, construct or otherwise provide affordable/workforce units equivalent to those required by 7.7.6 off site. Approval of offsite units shall be at the discretion of the Planning Board. All requirements of this bylaw that apply to on-site provision of affordable/workforce units shall apply to the provision of off-site affordable/workforce units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board as an integral element of the review and approval process.

#### **7.7.8 Fees-in-lieu of affordable/workforce housing unit provisions.**

As an alternative to the requirements of section 7.7.6 or section 7.7.7, and to the extent permitted by law, an applicant may contribute to the Eastham Affordable Housing Trust to be used for the development of affordable and/or workforce housing in-lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

1. **Calculation of fee-in-lieu-of units.** The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable/workforce units of equivalent value for the funding or purchase of equivalent housing, and/or housing assistance programs administered by the Town of Eastham and/or Eastham Affordable Housing Trust provided that:
  - (a) the applicant submits a plan acceptable to the Town to expend those funds within the same time frame as the applicant's development, and
  - (b) such proposal will result in an equal or greater number of units or lots than had they been created on site.
2. Equivalent value for ownership and/or rental projects, should be determined through the difference between the affordable sales price(s) and the market sales price(s) of similar bedroom units within the development.
3. The applicant shall pay for all appraisals, and the Town shall approve the applicant's chosen appraiser.
4. The Planning Board shall make the final determination of acceptable value,

in accordance with regulations it may adopt and amend from time to time. No building permit shall be issued until the applicant pays at least 5% of the total required fee to the Eastham Affordable Housing Trust. Additionally, no more than 50% of the certificates of occupancy shall be issued until the applicant pays at least 50% of the total required fee to the Eastham Affordable Housing Trust. All payments must be received prior to issuance of final use and occupancy permit.

5. Creation of Affordable Units. Cash contributions and donations of buildable land and/or buildings made to the Eastham Affordable Housing Trust shall be used according to the rules and regulations of said Trust.
6. A contribution of land shall be accompanied by a development plan acceptable to the Town demonstrating that the requisite number of units may be developed by right under zoning and reasonably expected to be approved under applicable municipal regulations. No building permits shall be issued until the applicant submits evidence acceptable to the Eastham Planning Board that the land has been conveyed to the receiving organization identified in the Planning Board's special permit or Site Plan Approval and affordable housing restriction has been recorded at the Barnstable County Registry of Deeds.

#### **7.7.9 Preservation of affordability and restrictions**

1. Each Affordable Unit and/or Workforce Housing Unit created in accordance with this bylaw shall be deed restricted subject to an encumbrance such as an affordable housing restriction and/or regulatory agreement as defined by M.G.L. Ch. 184, Sec. 31 and as approved by the Town, which shall ensure that the housing shall remain affordable and/or workforce in perpetuity to the greatest extent possible. In no case shall less than fifty percent of the units be affordable to households earning less than 80% of the area median income. Remaining units shall be affordable to those earning no more than 120% AMI.
2. The affordable housing restriction and/or a regulatory agreement shall be recorded at the Barnstable County Registry of Deeds and shall be in force in perpetuity, or for the maximum period of time allowed by law, so as to be binding on and enforceable against any person claiming an interest in the property and shall conform to the following:
  - The affordable housing restriction shall meet the requirements of the Local Initiative Program (LIP), 760 CMR 56.00 Local Initiative Program (LIP) and guidelines promulgated thereunder. The affordable housing restriction shall have seniority to any encumbrance on the property which would put at risk the perpetual nature of this restriction.
  - The developer shall submit to the Town a title search and certification by counsel whose selection shall be approved in advance by the Town that demonstrates the seniority of the affordable housing restriction and regulatory agreement;

- Affordable Housing Rental Units shall be rented only to an eligible low or moderate-income household adjusted for family size as determined by Department of Housing and Urban Development (HUD); at a rent not to exceed the maximum affordable rent established under the DHCD requirements and guidelines under LIP;
- Initial sale of an Affordable Housing Unit shall be made to a eligible low- or moderate-income household at a sale price not to exceed the maximum affordable sale price established under the DHCD requirements and guidelines under LIP;
- Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted above.
- Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by DHCD, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.
- The Planning Board shall require, as a condition for approval under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted above. The Building Inspector shall not issue a certificate of occupancy for any affordable unit until the deed restriction is recorded.

#### **7.7.10 Local Preference**

The maximum number of affordable and/or workforce units allowed by law and applicable subsidy programs but not more than seventy percent (70%) of the units shall be reserved for present residents of the Town of Eastham, or employees of the Town of Eastham or teacher employed by the school district serving the Eastham. A lottery shall be established in a form approved by the Town of Eastham and/or the subsidizing agency and/or the project's monitoring agent to implement this local preference.

#### **7.7.10 Review and Approval Criteria**

Projects falling under the provisions of this bylaw shall be reviewed and approved pursuant to the applicable regulatory requirements and review criteria for the zoning district in which the project is located. The Planning Board shall act as the special permit granting authority. The Planning Board may grant a special permit under Section 7.7 only if it finds that each of the criteria set forth below are satisfied, that the applicable requirements of subsection 7.7 have been met, and that the use as proposed will be in harmony with the purpose and intent of this Section and the zoning district in which the use is to be located.

1. Adequacy of the site, in terms of size, for the proposed structure or use;
2. Compliance with all applicable regulatory requirements for the zoning district in which the site is located.
3. Suitability of the site for the proposed structure or use with regard to the purpose and intent of the zoning district;

4. Adequacy of traffic flow management within the site as well as in relation to adjoining streets and properties so as to minimize unsafe and harmful impacts;
5. Compatibility of the proposed structure or use with surrounding land uses so as to minimize harmful impact or conflict with existing desirable neighborhood character, including views, vistas and other aesthetic values;
6. Adequacy of the method of sewage disposal, source of potable water and site drainage;
7. Protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies;
8. Adequacy of provision of utilities and other necessary or desirable public services;
9. Adequacy of control of artificial light, noise, litter, odor or other sources of nuisance or inconvenience to adjoining properties, public ways and the neighborhood;
10. Protection from degradation and alteration of the natural environment, including, but not limited to, slopes and other topographical features, vegetation, wetlands, and wildlife habitat.

#### **7.7.11 Conflict with other laws.**

The provisions of this bylaw shall be considered supplemental of existing Zoning Bylaw. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

#### **7.7.12 Administration.**

The Planning Board may adopt regulations for the orderly administration for this bylaw.

And further to amend **SECTION 21 DEFINITIONS** by adding definitions for the following terms:

**Affordable Housing Unit** – A dwelling unit reserved in perpetuity for ownership or rental by a household earning less than 80% of area median family income (AMI), and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

**Affordability Deed Restriction** – A deed rider, covenant, mortgage, easement, condominium document and/or other similar document that ensures that affordable housing remains on the land for at least 99 years and is binding and enforceable against any person with an interest in the property meeting the following standards:

1. Is in a form acceptable to the Eastham Planning Board, which may establish rules governing its standards for approving such restrictions; and the Massachusetts Department of Housing and Community Development (or its successor agency), in accordance with the standards under MGL c. 40B.
2. Includes provisions for adequate legal monitoring, including:
  - An identified nonprofit housing or government monitoring agency approved by the Affordable Housing Trust and;
  - A fallback nonprofit housing or government monitoring agency (which shall succeed the monitoring agency if the monitoring agency no longer exists). The Town of Eastham may be used as the fallback monitoring agency if the Town is granted the right to assign its responsibilities to another agency at its sole discretion.
3. Includes a grant of the right of first refusal, at an affordable housing price, to the monitoring agency and the fallback agency, if an income-eligible family cannot be found by the seller.
4. Includes provisions that the restriction can survive any bankruptcy, insolvency, or foreclosure, other than property tax or government super-lien foreclosure, and shall not otherwise be subject to nullification for any reason.
5. The model deed rider used by the Massachusetts Department of Housing and Community Development ~~may~~ shall be used for this purpose, for affordable housing units as defined in this bylaw, provided it is altered to meet all the restrictions of this section. The model deed rider shall be adapted as required for use with workforce units as defined in this bylaw.

**Workforce Housing Units** - A dwelling unit that is targeted to households with incomes above the affordable limit of 80% of area median income (AMI) and up to 120% AMI who may still be excluded from Eastham's private housing market.

**Subsidized Housing Inventory (SHI)** - The list compiled by the MA Department of Housing and Community Development (DHCD) containing the count of Low or Moderate Income Housing units by city or town.

**Local Initiative Program (LIP)** - A state housing program that was established to give cities and towns more flexibility in their efforts to provide low and moderate-income housing. It is administered by the Department of Housing and Community Development (DHCD).



or take any action relative thereto.

By Eastham Planning Board

**Summary:**

*The proposed amendment will require a deed restricted affordable unit and/or a protected workforce-housing unit be included in any development resulting in 4 or more dwelling units. Allow opportunities for density bonuses. Provide a range of options including on site, off site production and payment in lieu of construction to provide incentives and flexibility to developers. Requires that the second unit and every fourth unit created be either an affordable or workforce housing unit to ensure equity in between affordable and market rate unit production. Requires minimum percentages of units be spread among market rate, affordable and work force units to ensure equity across affordability levels and foster socio-economic diversity.*

**BOARD OF SELECTMEN RECOMMENDATION:**

**FINANCE COMMITTEE RECOMMENDATION:**

**PLANNING BOARD RECOMENDATION:**

*(Majority vote required)*